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APPLICATION NO	FILING DATE	FIRST NAME D INVENTOR	ATTORNEY DOCKET NO	CONFIRMATION NO
09 097,243	06 12 1998	JOSEPH S. MANNE	MAN-4	2724

20311 7590 11 23 2001  
BIERMAN MUSERLIAN AND LUCAS  
600 THIRD AVENUE  
NEW YORK, NY 10016

EXAMINER
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FULLER, RODNEY EVAN

ART UNIT	PAPER NUMBER
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2851

DATE MAILED: 11 23 2001

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No  
09/097,243

Applicant(s)  
Manne

Examiner  
Rodney Fuller

Art Unit  
2851



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Sep 4, 2001
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirements.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some\* c) ☐ None of
- 1 Certified copies of the priority documents have been received.
- 2 Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- 3 Copies of the certified copies of the priority documents have been received in this National Stage.

## Attachment(s)

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## DETAILED ACTION

### *Remarks*

In response to applicant's Amendment, dated September 4, 2001, the examiner acknowledges the amendments to claims 1, 10 and 11. Claims 1-14 are pending.

Regarding the 35 U.S.C. 103(a) rejection of claims 1-14 as being unpatentable over Martin (US 5,610,674); the applicant amended claims 1 and 11 to "...emphasize the fact that the present invention is portable and is worn by the user during the times when he is walking around" and makes the argument (page 3, 2nd and 4th paragraphs of Amendment) that "...Martin is not a portable system" and that Martin does not "...teach or suggest a stand alone portable scent delivery system which can be worn by the user so that the user can walk around while receiving scent-laden air." The examiner has considered the applicant's arguments in light of the amended claims and maintains the rejections. (See *Claim Rejections - 35 USC § 103* section below)

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

35 U.S.C. 103(a)  
No patentable invention can be made

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2. Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin (US 5,610,674)

Martin (US 5,610,674) discloses all the structure set forth in the claims (see Office Action mailed May 1, 2001), except wherein "...said scent generator housed in a case adapted to be worn by said user on the user's body such user is ambulatory when wearing said case thereby making the system portable." However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include the limitation wherein "...said scent generator housed in a case adapted to be worn by said user on the user's body such user is ambulatory when wearing said case thereby making the system portable," since it has been held that making an old device portable or movable without producing any new and unexpected result involves only routine skill in the art. *In re Lindberg*, 93 USPQ 23 (CCPA 1952).

The applicant has suggest that the portability of the present device is a distinguishing feature over Martin in that the scent apparatus of Martin is associated with a video system and there would not be a reason to separate the systems. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to separate the video system and scent apparatus of Martin, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168

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*Conclusion*

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney Fuller whose telephone number is (703) 306-5641. The examiner can normally be reached on Monday through Friday from 8 00 am to 4:30 pm

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Russ Adams, can be reached on (703)308-2847

*J. A. Adams*

REI

November 9, 2001